IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Cr.A.No.89 of 2001

Reserved on 26.12.2007

Date of decision 29.12.2007

State of H.P. Appellant

Versus

Duglu Ram and another Respondents

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr.Virender Kumar Verma,
Addl. Advocate General.

For the respondent: Mr. Neeraj Gupta and Mr.Vikash Rathore,
for the respondents.

Rajiv Sharma,J.

A challenge has been laid by the state to the judgment passed by the learned Sessions Judge, Kullu in Criminal Appeal No.4/98 dated 3.10.2000.

The facts which can be gathered from the judgment of the trial court dated 23.7.1997 are that Bidhu Ram driver (PW-3) of the Himachal Road Transport Corporation was given beatings by the accused on 29.9.1993. Bidhu Ram lodged a report Ex.PW-3/A which led to the registration of the FIR Ex.PW-3/B at Police Station, Manali. The challan was put up before the trial court. The prosecution examined as many as eight witnesses. The accused persons were examined under Section 313 Cr. P.C. The trial court convicted the respondents under Sections 341, 332, 504/34 I.P.C. read with section 185 of the Motor vehicles Act and had sentenced them to undergo rigorous imprisonment for six months and further sentenced

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[1] Whether reporter of local papers is allowed to see the judgment? No.

them to pay a fine of Rs.1000/- and in default of payment of fine they were ordered to further suffer simple imprisonment for two months vide judgment dated 23.7.1997.

The respondents preferred an appeal against the judgment of the Chief Judicial Magistrate, Lahaul & Spiti at Kullu before the learned Sessions Judge, Kullu by way of Criminal Appeal No.4/98. The learned Sessions Judge vide judgment dated 3.10.2000 set aside the judgment of the Chief Judicial Magistrate dated 23.7.1997. The conviction and sentence imposed on the respondents was set aside.

Mr.V.K.Verma, learned Additional Advocate General appearing for the appellant had strenuously argued that the judgment of the learned Sessions Judge, Kullu rendered in Criminal Appeal No.4/98 dated 3.10.2000 is not sustainable in the eyes of law. Mr. Neeraj Gupta and Mr.Vikas Rathore, learned counsel appearing for the respondents had supported the judgment dated 3.10.2000.

I have heard the learned counsel for the parties and also gone through the record of the case carefully.

PW-3 Bidhu Ram complainant had testified before the trial court that he was given beatings by two persons. PW-2 Rachpal Singh had also corroborated the statement of PW-3 to the effect that both the accused assaulted the driver. Independent witness i.e. PW-4 Mukesh Kumar had testified that the beatings were given only by one person. PW-5 an employee of H.R.T.C. did not support the prosecution case and was declared hostile. It is thus evident that two version emerges from the prosecution evidence. One is that the beatings were given to Bidhu Ram by two persons and the second is that the beatings were given to Bidhu Ram by only one person. Both the versions cannot be reconciled. It is the

cardinal principle of criminal jurisprudence that in view of contradictions in the statements of witnesses, one favourable to the accused is to be believed and accepted. The learned Sessions Judge had come to just conclusion that the prosecution has failed to prove its case against the respondents. There is neither any jurisdictional error nor any procedural irregularity in the judgment rendered by the learned Sessions Judge, Kullu.

The appeal is accordingly dismissed. The bonds furnished by the accused are discharged.

December 29, 2007(g) **(Rajiv Sharma), J.**